



DEPARTMENT OF STATE

Washington, D.C. 20520

4 May 81MEMORANDUM.

TO: Interagency FSN Personnel Policy
Coordinating Committee

FROM: PER/FSN - LaRue H. Velott *LRV*

SUBJECT: Policy Regarding Third Country
National Employees

REF: 3 FAM 927

The referenced section of 3 FAM, copy attached, provides guidance to the posts in determining the circumstances under which a Foreign National employee can be compensated as a Third Country National (TCN). Except in regard to USAID, no guidance is provided to our missions for developing the appropriate pay and benefits for a TCN.

The S/IG report on FSN management included a recommendation that PER/FSN should send an Airgram to posts reminding the Administrative Section that it must follow the provisions of 3 FAM 927 in administering their TCN programs. Such an airgram is being drafted and will be sent to the Regional Bureaus and Agency Headquarters for clearance.

In view of the lack of guidance contained in 3 FAM regarding pay and benefits for TCN's, this office surveyed nine international corporations who have large foreign national workforces around the world. The corporations included in the survey were:

Citicorp	Exxon
Mobil Oil Corporation	Trans World Airlines
Chase Manhattan Bank	Xerox
Merck and Company	ALCOA
E.I. DuPont de Nemours	

All of these corporations have a category of employees similar to our TCN's ~~with the exception of DuPont~~, and all have existing worldwide policies regarding salaries and benefits for this category of employees. The following is a summary of the TCN salary and benefit policies for these ~~eight~~ corporations:

know Pasen
NINQ

- 2 -

Salary Policies

- If the TCN's home country salary scale is higher than that of the host country, ~~seven~~^{SIX} of the ~~eight~~^{NINE} corporations maintain the TCN on his home country scale and one corporation pays the TCN on their expatriate American scale; and,
- If the TCN's home country salary scale is lower than that of the host country, three corporations place the TCN on the host country salary scale, three corporations place the TCN on the expatriate American scale and ~~two~~^{two} corporations continue to maintain the TCN on the home country pay scale and provide an offset to the salary through their benefit structure.

Benefit Policies

- ~~Five~~^{SIX} corporations continue the TCN on his home country retirement plan, one corporation provides retirement benefits on the basis of a 6 country average -- Japan, Netherlands, Germany, Belgium, France and United States -- one company tailors all benefits to offset difference between home country and host country salary plans, and one company provides the American expatriate retirement plan;
- Other typical FSN benefits are handled differently from one corporation to another with no consistent pattern; and
- All corporations provide additional benefits to TCN's that are not provided to FSN's and these include: Travel expense Reimbursement, Housing Allowance, Educational Allowances, Tax Equalization, Cost of Living, Post Hardship Allowance and Annual Reimbursement of travel to home country for leave purposes.

The results of this survey indicate that a worldwide policy on TCN compensation can be developed and that such a policy would conform with prevailing practices. PER/FSN proposes the development of a TCN compensation policy for inclusion in 3 FAM 927 after receiving the concurrence of the Regional Bureaus and the other agencies utilizing the Foreign Service personnel system.

The policy for an appropriate salary appears to be easier to develop than the policy regarding benefits. A TCN salary policy that would provide the higher of the home country or host country FSN pay for like work would be both easy to administer and in keeping with prevailing practices.

- 3 -

In regard to TCN benefits, PER/FSN could develop a glossary of appropriate benefits with established maximums based on a cross section of FSN benefits and the Standard Regulations for U.S. Civilian Employees of the USG serving overseas. Once developed, Posts would be authorized to provide benefits up to the maximum established. As part of PER/FSN's cost study of group insurance plans, the feasibility of providing retirement annuities, life insurance and medical benefits under one master contract could be explored.

This subject will be discussed at the next Interagency Coordinating Committee meeting at which time agency representatives should be prepared to comment on this subject and recommend a course of action regarding the establishment of a worldwide TCN compensation policy.

Attachment: As stated

cc: M/COMP - Mr. Rodger Feldman

PER/FSN:LHVelott:ch
4/5/81

~~*(2) Services Which May Not Be
Performed Under PSC~~

~~Services which involve classified material, policy formulation, program planning, representation, or supervision of U.S. citizens; also, professional, subprofessional, and clerical services other than those covered under preceding paragraph c(1).~~

~~(3) Approval of Contracts~~

~~To the extent that an AID mission has been delegated contracting authority, personal services contracts may be executed without prior Washington approval, subject to the provisions of sections 921 and 922, and to the availability of funds.~~

~~(4) Contents of Contract~~

~~(a) The terms of PSC's will conform to the direct-hire local or TCN compensation plan, if any, established for the post. In addition to basic compensation, local pay plans normally provide benefits which include, among others, annual and sick leave, premium pay, severance pay, and bonus payments.~~

~~(b) Specialized training programs similar to those afforded local direct-hire employees may be provided to PSC employees when it is to the advantage of the U.S. Government. Invitational travel to the United States and to other appropriate training sites, including temporary duty status for consultation and special orientation programs as required, is subject to the approval of the appropriate AID/W bureau or office.~~

~~(c) PSC employees of AID are excluded from participating in the Civil Service Retirement and Disability System (see section 972.1) and the Incentive Awards Program (see section 962).~~

~~(5) Participating Agency Use of PSC
Authority~~

~~The authority which AID has for contracting with individuals is available also to participating agencies in carrying out foreign assistance activities, provided the applicable participating agency service agreement with AID authorizes and provides funds for such contracts. **~~

927 Third-Country National (TCN's)

927.1 Definition

A third-country national (TCN) is an individual (a) who is neither a citizen of the United States nor of the country to which assigned for duty; and (b) who, if employed, is eligible for return travel to the TCN's home country or country of employment at U.S. Government expense.

Such an employee normally is recruited and employed from outside the host country and transferred from the point of employment to the host country. The return travel obligation assumed by the U.S. Government may have been the obligation of another employer in the area of assignment if the employee has been in substantially continuous employment which provided for the TCN's return to home country or country of employment.

~~**An applicant who is located in the country of intended assignment and who does not have a repatriation agreement with the applicant's most recent employer may not be hired as a TCN; however, the applicant may be hired under the same terms as an employee who is a citizen of the host country. **~~

927.2 Policy

a. General Policy

The appointment of a third-country national employee is effected only when:

(1) Qualified persons are not available in the host country;

(2) Limitation of time or other conditions prevent the training of persons in the host country for the job; and

(3) It is determined that program efficiency and policy objectives can be achieved only by using third-country nationals as a substitute for available and qualified U.S. citizens and persons from the host country.

UNIFORM STATE/AID/USIA REGULATIONS****b. Special Provisions Applicable to AID**(1) Tour of Duty

A TCN's tour is normally 2 years and starts from the date of arrival at post of assignment, and terminates on the date of actual or potential arrival at the TCN's designated place of residence in home country. Appointments may be for longer or shorter periods if the assignments so requires it.

(2) Repatriation Travel

A TCN must return to home country within 30 days after termination of employment, otherwise the TCN forfeits repatriation travel.

(3) Services To Be Performed by TCN's

(a) TCN's may be hired to provide professional and nonprofessional services. They may be employed as direct-hire or under a personal services contract. (See section 926.)

(b) Prohibitions against the type of work that may be performed by TCN's are outlined in sections 922.4 for direct-hire and 926 for personal services contract employees. **

927.3 Recruitment***927.3-1 Sources and Procedures**a. Sources*

(1) The nearest foreign area having qualified candidates.

(2) Another U.S. Government establishment in a third country or in the host country.

(3) An international agency or any firm employing third-country nationals in the host country.

b. Procedures

(1) Requesting post informs recruiting post of the following data:

(a) Position title, salary range, duties and qualification requirements of position, experience desired, education, age, language, personality, and physical requirements of position.

(b) Desired starting date, proposed tour of duty, and normal workweek.

(c) Leave and any other pertinent privileges or prohibitions of employment.

(d) Other pertinent items as outlined in section 927.4.

(2) The recruiting post interviews prospective candidates, requests acceptable candidates to complete Form DSP-33, Application for Employment in the Foreign Service of the United States, makes a reference check, and prepares an evaluation of each qualified candidate. The applications and related evaluations are then forwarded to the requesting post for approval.

(3) The requesting post reviews the material, selects a candidate, clears the candidate with the host government (if appropriate), and requests recruiting post to complete employment action, including a local security check.

(4) The requesting post authorizes the recruiting post to effect DS-1032, Notification of Personnel Action, and "Conditions of Employment Agreement" (see Exhibit 927) and advises the recruiting post of the desired effective date of employment, the appropriation and allotment to which salary and travel expenses are chargeable, the extent of authority to issue travel advances and travel orders, and the type of appointment to be given the applicant.

* Third-country national employees generally should be limited to tenure of 2 or 3 years and be given "Indefinite" appointments. "Conditional" and "Permanent" appointments may be given to third-country nationals when deemed in the best interests of the U.S. Government. * AID does not give permanent appointments. (See section 923.)*

UNIFORM STATE/AID/USIA REGULATIONS

** (2) Per diem for actual direct-route air travel time for the TCN.

(3) In addition to the free baggage allowance provided by the carrier, transportation of personal effects not in excess of 400 pounds (gross weight); 100 pounds (gross weight) of which may be shipped by air and the balance by surface carrier. When local circumstances warrant, the mission director may authorize up to 100 pounds (gross weight) additional unaccompanied surface freight.

(4) Automobiles and household furnishings are not shipped at U.S. Government expense.

(5) Living accommodations and household effects are not furnished to employees.

c. Travel for Purposes of Leave

A third-country national is not to be provided travel at Government expense for the purpose of taking leave unless provided for in the appropriate local compensation plan in accordance with section 931.2. TCN's are not eligible for the accrual of home leave under the Annual and Sick Leave Act of 1951, as amended. **

UNIFORM STATE/AID/USIA REGULATIONS

(5) The recruiting post prepares a Form DS-1032, Notification of Personnel Action, and "Conditions of Employment Agreement" based on the foregoing information. The "Remarks" section of the DS-1032 should contain the following comments:

(a) "Appointed at (recruiting post) for assignment to (duty post)."

(b) "Employment conditions and prohibitions in section 922.4 are applicable."
 (For AID, also include section 927.2b.)

(c) Statement as to authorization of travel and transportation of effects to post of assignment and return to post of recruitment. As a general rule, the automobiles of third-country nationals will not be shipped at U.S. Government expense. Exceptions to this rule may be approved at the post, except that for USIA, they must be approved by the Foreign Service Personnel Division (IPT/F). (See 6 FAM 100 for regulations on travel and transportation of effects.)

**927.3-2 Special Provisions for AID

Travel and transportation benefits for TCN's are as follows:

a. Tours of Duty in Excess of 1 Year

A TCN being employed for a period of service of 1 year or more is entitled to the following travel privileges on assignment to post travel orders:

(1) Travel

Economy or less than first-class air accommodations for direct travel from the country in which recruited to the country of assignment for the TCN and dependents. Dependents are to be permitted to travel at Government expense only if such travel is approved by the employing mission or country. Dependents of a TCN, for purposes of travel to and from the country of assignment, include the spouse and those children (including adopted children and stepchildren) who are under the age of 21 and unmarried, or over the age of 21 and incapable of self-support.

(2) Per Diem

Per diem for actual direct route air travel time for the TCN and dependents. Such per diem is not to exceed the maximum rates provided for Foreign Service American Employees.

(3) Automobile and Household Effects

If local conditions in the country of assignment warrant, the mission director may authorize the shipment at U.S. Government expense of one privately owned automobile and household furnishings not in excess of the allowable expenses and weight allowance provided for Foreign Service American employees at comparable grade level.

(4) Personal Effects

(a) If an employee ships household effects, the employee may ship, by unaccompanied airfreight, household effects not in excess of the weight allowance provided for Foreign Service American employees and their dependents.

(b) If the employee ships no household effects, the employee may ship not in excess of 400 pounds (gross weight) of personal effects for self and 300 pounds (gross weight) for each dependent. One hundred pounds (gross weight) of each traveler's allowance may be transported by airfreight; the balance is transported by surface carrier. If local circumstances in the country of assignment warrant, the mission director may authorize up to 100 pounds (gross weight) additional unaccompanied surface freight for each authorized traveler.

(5) Living accommodations and household effects are not furnished to employees.

b. Tours of Duty of 1 Year or Less

A TCN being employed for a period of service of less than 1 year is entitled to the following travel privileges on assignment to post travel orders.

(1) Economy or less than first-class accommodations for direct air travel from the country in which the TCN is recruited to the country of assignment for self only. **

CONDITIONS OF EMPLOYMENT AGREEMENT
FOR THIRD-COUNTRY NATIONALS

MEMORANDUM TO: _____

The (headquarters agency) has offered you an appointment as a _____ with the _____ (post) at a salary of _____ per annum. Your regular work schedule will be _____ hours a week; and you will receive such overtime, holiday, and night differential pay as you are entitled to under the compensation plan for third-country nationals at _____ (post). You will be entitled to the same annual and sick leave privileges as those granted to local employees of _____ (post). If you accept our offer of employment--

1. The term of your appointment will be for _____ years, subject to extensions for additional similar periods, when mutually agreed. Your continued employment under this initial appointment (as well as any extensions thereof) will be dependent on the availability of funds, the post's determination of continuing need for your services, and your satisfactory performance and conduct.
2. Your appointment is subject to satisfactory completion of security and suitability investigations.
3. You (and your dependents) ^{1/} will be entitled to travel, per diem, and transportation of personal and household effects from the place of your residence at time of employment to your post of assignment. If you complete the tour of duty specified in the "Notification of Personnel Action," or if you are separated by the (overseas establishment) prior to completion of the agreed ^{1/} tour of duty for reasons beyond your control, you (and your dependents) will be entitled to return travel to your residence at the time of your employment.
4. If you so choose, you may draw an advance travel allowance of \$ _____ prior to departure from the post of recruitment which is refundable by you to _____ (post).
5. It is understood that you will comply with the regulations and conditions of employment established at the _____ (post) and the local laws and regulations of the host country.

* Your signature in the place provided below will signify that you have read, understood, and agreed to this agreement. *

For the Principal Officer (or Public Affairs Officer)

(Post)_____
(Signature)_____
(Employee's Signature)_____
(Title)_____
(Date)_____
(Date)

^{1/} Omit for AID employees hired for 1 year or less.

UNIFORM STATE/AID/USIA REGULATIONS

927.4 Visas, Work Permits, Import Privileges, Taxes, and Social Security

The post requesting the employment of a third-country national should determine whether:

- a. The host government requires a visa for the entry of the employee and dependents, if any, and a work permit for the employee;
- b. Import privileges will be granted, and where import duties must be paid, the amounts required so that the employee may be correctly informed of the treatment to be expected in this regard;
- c. Local tax laws will be applicable to the employee and, if so, the extent of the employee's responsibility;
- d. Guaranty of safe conduct can be assured if international hostilities or internal revolt should endanger the employee's safety.

~~928 Personnel Reporting~~~~928.1 Responsibilities~~~~a. State and USIA~~

A Form FS-468, Monthly Report on Employment of Non-U.S. Citizens and Temporary U.S. Citizen Resident Staff, covering all posts in the country must be submitted by the fiscal-servicing post reflecting employment as of the end of the month. If there is an authorized USIA complement for the country, prepare a separate report and mail it in duplicate to USIA/Washington, Attention: IPT/S. No report need be prepared covering employees of the Foreign Agricultural Service.

~~b. AID~~

Each AID mission is responsible for reporting local employees paid from U.S. Government appropriated funds and from cooperating country trust funds on Form AID 3-227.

~~*(See Handbook 25, Employment and Promotion.)*~~

~~928.2 Procedures~~~~a. State and USIA~~

FS-468 should be prepared in accordance with instructions in Exhibit 928. Except where intermittent employment has been a factor, this report should balance as follows: The previous month's sum of lines A through C, plus current month's accessions (line F), minus current month's separations (line G), should equal the current month's total of lines A through C.

Employees under personal service contracts are included as full-time, part-time, or intermittent employees in lines A through D. Entries for FBO personal service contract employees are footnoted as follows: "Includes (number) contract personnel at (dollar amount) per month."

Individuals engaged by nonpersonal service contract are not reported. In fiscal terms, contracts for employment classified under Object Code 11 are to be included on form FS-468; contracts classified under Object Code 25 are excluded.

~~b. AID~~

Form AID 3-227 should be prepared in accordance with the instructions given in ~~*Handbook 25, Employment and Promotion*~~